

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

January 13, 1984

Don M. Schmidt,  
City Attorney  
241 West South Street  
Kalamazoo, Michigan 49007

Dear Mr. Schmidt:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to city officials and employees.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Pursuant to sections 5(4) and 7(1) of the Act (MCL 4.417), a city is required to register as a lobbyist if the city contracts for a lobbyist agent or if, in any 12 month period, it expends more than \$1,000 for lobbying or more than \$250 for lobbying a single public official. In addition, a person who lobbies on behalf of the city is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act are identified in section 5(7), which states in relevant part:

"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(ii) Employees of townships, villages, cities, counties or school boards." (emphasis added)

You do not dispute that elected officials of local government are excluded from the Act by section 5(7)(b). However, you point out that appointed officials are frequently considered employees of their political subdivisions. Therefore, you ask whether an appointed local official, such as a city manager, who is also a government employee is deemed a public official or an employee for purposes of the Act.

"Elected or appointed public officials of state or local government" is not defined in the Act. However, rule 1(1)(c) (1981 AACS R4.411) provides:

"Rule 1. (1) As used in the act or these rules:

(c) 'Elected or appointed public officials of state or local government' means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

Research indicates that the office of city manager is prescribed by charter. A typical city charter also provides that a city manager shall not serve a fixed term of office but shall serve at the pleasure of the manager's appointing authority. City managers whose offices are established in this manner are therefore "appointed public officials of . . . local government" who are not required to register as lobbyist agents unless they are brought back into the Act as employees under section 5(7)(c)(ii).

Section 5(7)(c)(ii) creates an exception to the exemption found in section 5(7)(b). That is, subsection (7)(c)(ii) specifically states the exemption for public officials found in subsection (7)(b) does not include employees of townships, villages, cities, counties or school boards. As you point out, the effect of section 5(7)(c)(ii) on persons who are both appointed public officials and employees is unclear. This uncertainty must be resolved by examining the Act's language to ascertain the intention of the legislature.

Section 5(7)(b), in a single phrase, exempts both state and local public officials. Therefore, it appears that section 5(7)(b) was intended to exclude local public officials holding positions similar to those held by exempt state officials.

The exemption carved by section 5(7)(b) for appointed state officials who are also employees is relatively clear. Although "elected or appointed public official of state . . . government" is not itself defined in the Act, section 6(2) (MCL 4.416) provides that a "public official" is "an official in the executive or legislative branch of state government." Officials in the executive and legislative branches are defined in sections 5(9) and (10) to include elected or appointed state officeholders and employees serving in non-clerical, policy-making capacities who are not under civil service. Thus, the Act implies that policymaking employees of state government who are not under civil service are public officials and not employees for purposes of the Act. As such, they are not required to register as lobbyist agents.

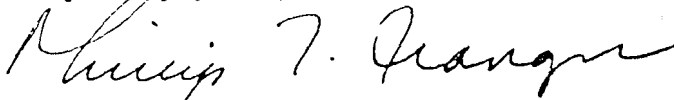
Don M. Schmidt  
Page 3

This analysis indicates that policymaking employees of local government who are public officials as defined in rule 1(1)(c) are "elected or appointed public officials of . . . local government." However, they are excluded from the Act by section 5(7)(b). As in the case of state policymakers, they are not brought back into the Act by section 5(7)(c) because the Act does not consider them to be employees of their political subdivision.

In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action. A city manager's duties are of broad scope and include the authority to commit the city to a certain course of action. As noted previously, a city manager is also an appointed local official who, pursuant to charter, serves at the pleasure of the appointing authority. Consequently, a city manager is a public official who is not subject to the Act's registration and reporting requirements, provided the city manager receives no additional compensation for lobbying and the lobbying is in the course or scope of office.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw

## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

January 13, 1984

Don R. Elliott  
Executive Director  
Michigan Association of School Administrators  
421 West Kalamazoo  
Lansing, Michigan 48933

Dear Mr. Elliott:

This is in response to your request for a declaratory ruling with respect to the application of the lobby law, 1978 PA 472 (the "Act"), to school superintendents and other school administrators.

You indicate it is your belief that school officials are exempt from the registration provisions of the Act.

Section 5(5) of the Act (MCL 4.415) defines "lobbyist agent" as follows:

"(5) 'Lobbyist agent' means a person who receives compensation or reimbursement of actual expenses or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying."

Section 5(7) exempts certain categories of individuals from the definitions of lobbyist and lobbyist agent, as follows:

"(7) Lobbyist or lobbyist agent does not include:

(a) A publisher, owner or working member of the press, radio, or television while disseminating news or editorial comment to the general public in the ordinary course of business.

(b) All elected or appointed officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(i) Employees of public or private colleges, community colleges, junior colleges or universities.

(ii) Employees of townships, villages, cities, counties or school boards.

(iii) Employees of state executive departments.

(iv) Employees of the judicial branch of government.

(v) Appointed members of state level boards and commissions.

(d) A member of a lobbyist, if the lobbyist is a membership organization or association, and if the member of a lobbyist does not separately qualify as a lobbyist under subsection (4)."

Subsection (b) exempts elected or appointed public officials acting in the course of their office. However, subsection (c) eliminates this exemption for public officials who are identified as employees.

In the course of implementing the Act the Secretary of State promulgated administrative rules. Rule 1(1)(c) of those rules (1981 AACRS R4.411) defines the term "elected or appointed public officials of state or local government" as:

" . . . officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

There is, of course, no difficulty in determining whether an official has been elected to the official position. On the other hand, it is harder to determine which appointed officials are covered by the exemption in section 5(7)(b) and are not employees subject to registration pursuant to section 5(7)(c). These statutory provisions and rule 1(1)(c) must be read in conjunction with the various statutes governing the organization of school districts in order to resolve the issue.

The relevant statutes were enclosed with your letter. The law governing the appointment of administrators in first, second, third and fourth class school districts is found at MCL 380.132, 380.247, 380.346, and 380.471a respectively. The third and fourth class districts are required to appoint a superintendent for a contractual period of up to 5 years. First and second class districts are authorized to appoint a superintendent for a contractual term not in excess of 6 years.

All classes of districts are authorized to employ assistant superintendents, principals, assistant principals, guidance directors and other administrators for contractual periods not exceeding 3 years. In each case a notice of nonrenewal must be given prior to the end of the contract or the contract is automatically renewed for 1 year.

Each of the statutes cited above provides that an administrator, other than a superintendent, may be issued a notice of nonrenewal for reasons which are not arbitrary or capricious. This protection against arbitrary or capricious nonrenewal does not extend to a superintendent. A superintendent appears to be the only person whose contract may be not renewed without providing a reason.

Intermediate school superintendents are appointed for a period of not more than 4 years (MCL 380.623). They are assigned a number of duties by statute and non renewal may be accomplished without providing a reason.

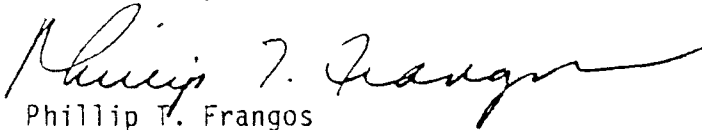
In addition, it is clear that the statutes governing the operation of school districts set forth duties for school superintendents which indicate the policy-making nature of the position. The other administrators listed perform their

Don R. Elliott  
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duties under the direction of the superintendent as employees of the school district rather than as officials. Among school administrators, only the superintendent appears to qualify for the exemptions set forth in section 5(7) of the Act for "elected or appointed public officials." Subsection (c) makes it clear that those who are employees can become lobbyist agents pursuant to the Act if they meet the requirements specified in section 5(5).

This letter is an interpretive statement of the provisions of the Act. A declaratory ruling has not been provided because the Michigan Association of School Administrators is not an "interested person" as prescribed in rule 3 (1981 AACCS 4.413).

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos".

Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



3-84-LI

LANSING

MICHIGAN 48918

January 24, 1984

Kenneth F. Light, President  
Lake Superior State College  
Sault Ste. Marie, Michigan 49783

Dear Mr. Light:

This is in response to your inquiry concerning applicability of the lobby act (the "Act"), 1978 PA 472, to colleges and college officials.

"Lobbying" is defined in section 5(2) of the Act (MCL 4.415) as "communicating directly with an official in the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action."

Pursuant to sections 5(4) and 7(1) of the Act (MCL 4.417), a college or university is required to register as a lobbyist if, in any 12 month period, it expends more than \$1,000 for lobbying or more than \$250 for lobbying a single public official. In addition, a person who lobbies on behalf of the school is required by sections 5(5) and 7(2) to register as a lobbyist agent upon receiving "compensation or reimbursement of actual expenses, or both, in a combined amount in excess of \$250.00 in any 12-month period for lobbying", unless the person is specifically excluded from the Act's registration and reporting requirements.

Persons who are exempt from the Act's requirements are identified in section 5(7), which provides in relevant part:

"Sec. 5. (7) Lobbyist or lobbyist agent does not include:

(b) All elected or appointed public officials of state or local government who are acting in the course or scope of the office for no compensation, other than that provided by law for the office.

(c) For the purposes of this act, subdivision (b) shall not include:

(i) Employees of public or private colleges, community colleges, junior colleges or universities.

(v) Appointed members of state level boards and commissions."

Your letter suggests that members of the Lake Superior State College Board of

Control are "elected or appointed public officials of state or local government" who are exempt from registration under the Act. However, Article 8 of the Constitution of 1963 provides that members of the controlling boards of institutions having authority to grant baccalaureate degrees, other than the boards of the University of Michigan, Michigan State University, and Wayne State University, shall be appointed by the governor. Section 5(7)(c)(v) specifically states that appointed members of state level boards and commissions are not public officials who are excluded from the definition of "lobbyist" or "lobbyist agent." Therefore, an appointed member of a college or university board who receives more than \$250 from the school in a 12 month period for lobbying is a lobbyist agent who must register and file periodic reports as required by the Act.

You also ask whether the secretary of the Board of Control is an exempt public official under the Act. The broader issue raised by your inquiry is which college or university officers are excluded from the Act and which officers are employees who may become lobbyist agents. It is in this broader context that the issue will be addressed.

"Elected or appointed public officials of state or local government"--the category of persons who are exempt under section 5(7)(b)--is not defined anywhere in the Act. However, rule 1(1)(c) provides:

"Rule 1. (1) As used in the act or these rules:

(c) 'Elected or appointed public officials of state or local government' means officials whose term of office is prescribed by statute, charter, ordinance, or the state constitution of 1963 or who serve at the pleasure of their appointing authority."

A review of the Constitution and the enabling statutes of the state's colleges and universities indicates that each college or university president holds an office prescribed by statute. The president is designated the principal executive officer of the institution, is ex officio a member of the board, and may be removed at the pleasure of the appointing authority. As such, a college or university president is an elected or appointed public official as defined in rule 1(1)(c). It should be noted that a college or university president is not brought back into the Act by section 5(7)(c)(v). The president is not appointed to the board of control but is made an ex officio member by the Constitution.

There are, as you note, other college officers who appear to meet the definition found in rule 1(1)(c). However, rule 1(1)(c) cannot create a broader class of exempt officials than the legislature intended. Section 5(7)(c)(i) provides that employees of colleges or universities are not exempt officials. Therefore, resolution of the issue you raise depends upon whether the secretary of the Board of Control is considered a public official or an employee for purposes of the Act.

While "elected or appointed public official of state or local government" is not itself defined in the Act, section 6(2)(MCL 4.416) provides that a "public offi-

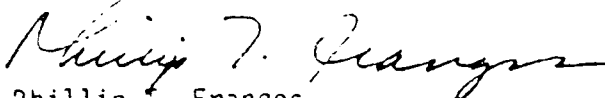
cial" is "an official in the executive branch or legislative branch of state government." Pursuant to sections 5(9) and (10), officials in the executive and legislative branches include elected or appointed officeholders and policymaking employees who are not under civil service. It appears that the legislature considered public officials to be persons who occupy policymaking positions. In a letter to Senator Ed Fredricks, dated December 7, 1983, the Department indicated that a person serves in a policymaking capacity if the person's duties are without specified boundaries and include discretion or authority in matters involving governmental action.

With respect to colleges or universities, the president appears to be the only individual whose wide range of duties include the exercise of discretion or authority in matters involving the school. The secretary of the board and other officers have no autonomous authority but operate under the direction or control of the president and/or the board of control. As such, a college or university president is the only officer who is both an "elected or appointed public official" as defined by rule 1(1)(c) and a policymaker as contemplated by the Act. All other officers are considered employees who may become lobbyist agents upon meeting the requirements of section 5(5).

In conclusion, appointed members of a college or university board of control are subject to the Act's registration and reporting requirements pursuant to section 5(7)(c)(v). Similarly, the secretary of the board and other school officers are employees who, according to section 5(7)(c)(i), must register as lobbyist agents upon receiving compensation or reimbursement in excess of \$250 in a 12 month period for lobbying. A college or university president is an elected or appointed public official who is excluded from the Act by section 5(7)(b), provided the president lobbies in the course or scope of office for no additional compensation.

This response is for information and explanatory purposes only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

January 27, 1984

The Honorable Vernon J. Ehlers  
Assistant Republican Floor Leader  
House of Representatives  
State Capitol  
Lansing, Michigan 48909

Dear Representative Ehlers:

You have raised several issues and request an interpretation regarding the lobbyist act (the "Act"), 1978 PA 472.

Your first concern is a lobbyist might incorrectly report that you had received something which you did not actually accept. You request the Department notify all public officials once a year when their names appear on the reports of lobbyist agents. Section 8(5) of the Act, MCL 4.418, does deal with the subject matter of your concern. It states:

"(5) Within a reasonable time after receipt of a request from an elected public official in regard to a report of a lobbyist or a lobbyist agent, the secretary of state shall report to the elected public official on any reported activity by the lobbyist or lobbyist agent in that report, and shall notify the elected public official of the specific occurrence and the specific nature of the reported activity."

Under this section you or any other elected public official may request this information after each semi-annual reporting period. The statute indicates you must specify which lobbyist or lobbyist agent report(s) you want checked. Because the first report under the Act is not due to be filed until August 31, 1984, and the number of filers is still unknown, the Department has not yet determined what summaries might be compiled from the reported information. In addition, the Department does not know, at this time, how much money will be appropriated by the Legislature to enforce the Act or whether funds will be appropriated to computerize the records filed under the Act. If the records are computerized, it will be easy to create a list of all lobbyists and lobbyist agents who have reported the name of a particular public official. With a manual recordkeeping system, however, it would be very time consuming and expensive to check several thousand reports. Because it appears there will be about 1,900 public officials, your suggestion that the Department automatically notify all public officials whose names appear in lobbyist and lobbyist agent reports is not economically feasible.

Your second concern relates to the acceptance of honoraria by public officials. The definition of "gift" in section 4(1) of the Act, MCL 4.414 would include honoraria, "unless consideration of equal or greater value is received therefor." The Department's rules address honoraria in rules 1(1)(e) and 73, 1981 AACS R4.411, R4.473:

"Rule 1(1)(e) 'Honorarium' means a payment for speaking at an event, participating in a panel or seminar, or engaging in any similar activity. Free admission, food, beverages, and similar nominal benefits provided to a public official at an event at which he or she speaks, participates in a panel or seminar, or performs a similar service, and a reimbursement or advance for actual travel, meals, and necessary accommodations provided directly in connection with the event, are not payments.

"Rule 73. An honorarium paid directly to a public official by a lobbyist or lobbyist agent shall be considered a gift within the meaning of section 11 of the act when it is clear from all of the surrounding circumstances that the services provided by the public official do not represent equal or greater value than the payment received."

Section 11(2) of the Act, MCL 4.421, and rule 71, 1981 AACS 4.471, prohibit a lobbyist or lobbyist agent from giving a gift to a public official.

You have suggested travel expenses should be deducted from honoraria and should be at the standard mileage rate paid legislators by the state. You feel meal and lodging expenses should be computed at levels allowed state employees and air travel should be limited to the tourist class airfare. Rule 1(1)(e) clearly specifies travel expenses, meals, and necessary lodging, as long as they are actual expenses, are not payments and, therefore, are not honoraria. Because the rules address this topic and do not limit these expenses to the cost of tourist class airfare or the standard meal and lodging expenses allowed state employees, the Department cannot administratively impose those limits which you suggest. All actual travel, meal, and necessary lodging expenses advanced or reimbursed by a lobbyist or lobbyist agent are excluded from honoraria.

A lobbyist or lobbyist agent must report any advance payment or reimbursement given to a public official for meals as food and beverage expenditures. The cost of food and beverage provided directly to the public official at the meeting or seminar must also be reported by the lobbyist or lobbyist agent. In general, when the total of the travel expense, lodging expense, and honoraria paid to the public official is \$500.00 or more, the lobbyist or lobbyist agent must also report the total as a financial transaction pursuant to section 8(1)(c).

With respect to using a standard mileage rate for automobile travel, actual expenses are excluded. However, actual automobile expenses can be difficult to compute if insurance, depreciation, tire wear, etc. are included. Therefore, the Department will assume the mileage rate paid legislators when reimbursed

with state funds (currently \$0.295 per mile) is not more than the actual cost of automotive travel. Any greater figure must be supportable by the actual costs to operate the vehicle driven.

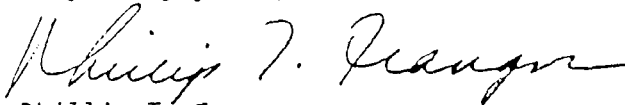
Section 11(2) and Rule 73 both indicate payment for an honorarium does not violate the Act if it does not exceed the value of the speech provided by the public official. To the extent that an honorarium exceeds the value received by a lobbyist or lobbyist agent paying the honorarium, a gift is made in violation of the Act. If the excessive honorarium is paid by a person who is not a lobbyist or lobbyist agent, the Act does not apply to the transaction, unless the excess is a payment made to influence legislative or executive action. Should the excess be paid by a non-lobbyist or non-lobbyist agent to influence legislative or executive action, the amount of the excess would be counted towards the person's \$250.00 and \$1,000.00 thresholds.

"Honorarium" is included within the definition of "expenditure" in section 3(2) of the Act, MCL 4.413. An expenditure "for lobbying made or incurred by a lobbyist, a lobbyist agent, or an employee of a lobbyist or lobbyist agent" (emphasis added) must be reported pursuant to section 8(1)(b) of the Act. Therefore, an honorarium made for lobbying must be reported by a lobbyist or lobbyist agent.

Your final concern is whether speeches given out-of-state to groups with no in-state dealings need to be reported at all. The Act makes no distinction between speeches made in Michigan and elsewhere or between groups which have dealings in Michigan and those which do not. The Act applies to any transaction between a public official and a person who meets the definition of lobbyist or lobbyist agent. If the person paying you for an out-of-state speech is not a lobbyist or lobbyist agent, that person would not be filing a report.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,



Phillip T. Frangos  
Director  
Office of Hearings and Legislation

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## MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

January 31, 1984

James S. Mickelson, ACSW  
Executive Director  
Michigan Association of Children's Alliances  
P.O. Box 20247, Suite 739  
111 S. Capitol Avenue  
Lansing, Michigan 48901

Dear Mr. Mickelson:

This is in response to your request for "clarification of the Lobbyist Registration Act," 1978 PA 472 (the "Act"). You indicate that "Regulations point out that no gift valued at \$25.00 or more can be given to a legislator or public policy making official." You state it is customary for your Association to present a "Legislator of the Year Award" to a legislator whom you feel has done outstanding work in legislation which pertains to children and families. You indicate that this award has in the past consisted of "recognition . . . through (your) newsletter and . . . a plaque (for which you paid) . . . \$35-\$40." The plaque contains a statement that the legislator has received the "Legislator of the Year" award. You wonder if such plaque is a "gift" or whether the practice may continue after the implementation of the Act.

"Gift" is defined in section 4 of the Act (MCL 4.414) as:

" . . . a payment, advance, forbearance, or the rendering or deposit of money, services, or anything of value, the value of which exceeds \$25.00 in any 1-month period, unless consideration of equal or greater value is received therefor . . . ."

A number of exclusions from this definition may be found at section 4(1)(a) - (e), but are not helpful in resolving the question you present.

Clearly the definition of "gift" as used in the Act contemplates that the particular item have an intrinsic value in and of itself. The type of plaque you describe is a symbolic citation or award based upon merit as determined by your

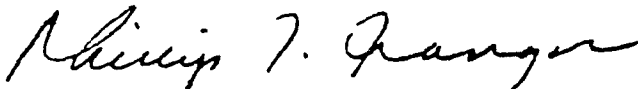
James S. Mickelson  
Page 2

organization. Clearly it was not the intent of the Act to discourage symbolic recognition of commendable public service. Therefore, while the plaque you describe may have cost more than \$25.00, its intrinsic value is substantially less, and therefore it is the department's belief that awards should not be classified as gifts unless the intrinsic or actual value is \$25.00 or more.

One possible test could be the value of the plaque in the open market, i.e., could the recipient sell it for more than \$25.00? The type of plaque you describe, although costing more than \$25.00, could most likely not be sold for more than \$25.00 and, therefore, is not a gift. Should a "plaque" consist of an item with intrinsic value clearly greater than \$25.00, the item will be considered as being a gift, the donation of which is prohibited by section 11(2) of the Act.

The above is not a declaratory ruling because no such ruling was requested.

Very truly yours,

A handwritten signature in cursive script, reading "Phillip T. Frangos".

Phillip T. Frangos  
Director  
Office of Hearings and Legislation

PTF/cw